

1 Gregory L. Spallas, SBN 129306
Kia E. Myers, SBN 257062
2 PHILLIPS, SPALLAS & ANGSTADT LLP
Three Embarcadero Center, Suite 550
3 San Francisco, California 94111
Tel: (415) 278-9400
4 Fax: (415) 278-9411

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5 Attorneys for Defendant
6 WAL-MART, STORES, INC.

7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9

10 CARMEN LEON,

11 Plaintiffs,

12 vs.

13 WAL-MART STORES, INC. AND DOES 1-
14 10.

15 Defendants.
16
17

Case No.: 5:09-cv-05358-JF

**PARTIES' STIPULATED PROTECTIVE
ORDER**

(MODIFIED BY THE COURT)

18 The parties hereto stipulate to the following protective order:

19 1. PURPOSES AND LIMITATIONS

20 Disclosure and discovery activity in this action are likely to involve production of
21 confidential, proprietary, or private information for which special protection from public
22 disclosure and from use for any purpose other than prosecuting this litigation would be
23 warranted. Accordingly, the parties hereby stipulate to the following Stipulated Protective
24 Order. The parties acknowledge that this Order does not confer blanket protections on all
25 disclosures or responses to discovery and that the protection it affords extends only to the limited
26 information or items that are entitled under the applicable legal principles to treatment as
27 confidential. The parties further acknowledge, as set forth in Section 10, below, that this
28 Stipulated Protective Order creates no entitlement to file confidential information under seal;

Civil Local Rule 79-5

~~California Rule of Court 243.1~~ sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and respective counsel (and their support staff).

2.2 Disclosure or Discovery Material: all items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced by a party to this action or generated by a party to this action in disclosures or responses to discovery in this matter.

2.3 "Confidential" Information or Items: information (regardless of how generated, stored or maintained) or tangible things that concern Wal-Mart Stores, Inc., may include but are not limited to, personnel files of Wal-Mart's employees, seminar material, instruction manuals, business operation plans, practice, policy and procedure guidelines, and other documentation, records, and reports dealing with or relating to Wal-Mart Stores, Inc.'s corporate practices. Likewise, "confidential" information or items may include, but is not limited to, medical or psychological records pertaining to Plaintiff.

2.4 "Highly Confidential – Attorneys' Eyes Only" Information or Items: extremely sensitive "Confidential Information or Items" whose disclosure to another Party or nonparty would create a substantial risk of serious injury that could not be avoided by less restrictive means.

2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material in this action.

2.7. Designating Party: a Party or non-party that designates information or items that it produces in disclosures or in responses to discovery as "Confidential" or "Highly Confidential – Attorneys' Eyes Only."

2.8 Protected Material: any Disclosure or Discovery Material that is designated as "Confidential" or as "Highly Confidential – Attorneys' Eyes Only," but shall not include those same materials or other materials that are lawfully obtained from a source other than a Party to this action. A Party, however, may apply to the above-titled Court to designate as Protected Material any information or materials lawfully obtained from a source other than a Party to this action.

2.9 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action and who is not a past or a current employee of a Party or of a competitor of a Party's and who, at the time of retention, is not anticipated to become an employee of a Party or a competitor of a Party. This definition includes a professional jury or trial consultant retained in connection with this litigation.

2.10 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or counsel to or in court or in other settings that might reveal Protected Material.

4. DURATION

Even after the termination of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. **For a period of six months after the final termination of this action, this court will retain jurisdiction to enforce the terms of this order.**

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or non-party that designates information or items for protection under this Order must take

1 care to limit any such designation to specific material that qualifies under the appropriate
 2 standards. A Designating Party must take care to designate for protection only those parts of
 3 material, documents, items, or oral or written communications that qualify – so that other
 4 portions of the material, documents, items, or communications for which protection is not
 5 warranted are not swept unjustifiably within the ambit of this Order.

6 If it comes to a Party's or a non-party's attention that information or items that it
 7 designated for protection do not qualify for protection at all, or do not qualify for the level of
 8 protection initially asserted, that Party or non-party must promptly notify all other parties that it
 9 is withdrawing the mistaken designation.

10 5.2. Manner and Timing of Designations. Except as otherwise provided in this
 11 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or
 12 ordered, material that qualifies for protection under this Order must be clearly so designated
 13 before the material is disclosed or produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (apart from transcripts of depositions or
 16 other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL"
 17 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the bottom of each page
 18 that contains protected material. If only a portion or portions of the material on a page qualifies
 19 for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
 20 making appropriate markings in the margins) and must specify, for each portion, the level of
 21 protection being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
 22 ATTORNEYS' EYES ONLY").

23 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
 24 Party or non-party offering or sponsoring the testimony identify on the record, before the close
 25 of the deposition, hearing, or other proceeding, all protected testimony, and further specify any
 26 portions of the testimony that qualify as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
 27 ATTORNEYS' EYES ONLY."

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1 When it is impractical to identify separately each portion of testimony that is entitled to
 2 protection, and when it appears that substantial portions of the testimony may qualify for
 3 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the
 4 record (before the deposition or proceeding is concluded) a right to have up to 10 days to
 5 identify the specific portions of the testimony as to which protection is sought and to specify the
 6 level of protection being asserted ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
 7 ATTORNEYS' EYES ONLY"). Only those portions of the testimony that are appropriately
 8 designated for protection within the 10 days shall be covered by the provisions of this Stipulated
 9 Protective Order.

10 Transcript pages containing Protected Material must be separately bound by the court
 11 reporter, who must affix to the bottom of each such page the legend "CONFIDENTIAL" or
 12 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" as instructed by the Party or
 13 nonparty offering or sponsoring the witness or presenting the testimony. The Designating Party
 14 of any such material shall bear any additional court reporter fees or costs that are caused by the
 15 designation.

16 (c) for information produced in some form other than documentary, and for any other
 17 tangible items, that the Producing Party affix in a prominent place on the exterior of the
 18 container or containers in which the information or item is stored the legend
 19 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only
 20 portions of the information or item warrant protection, the Producing Party, to the extent
 21 practicable, shall identify the protected portions, specifying whether they qualify as
 22 "Confidential" or as "Highly Confidential – Attorneys' Eyes Only."

23 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 24 designate qualified information or items as "Confidential" or "Highly Confidential – Attorneys'
 25 Eyes Only" does not, standing alone, waive the Designating Party's right to secure protection
 26 under this Order for such material. If material is appropriately designated as "Confidential" or
 27 "Highly Confidential – Attorneys' Eyes Only" after the material was initially produced, the
 28 //

1 Receiving Party, on timely notification of the designation, must make reasonable efforts to
2 assure that the material is treated in accordance with the provisions of this Order.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
5 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
6 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
7 waive its right to challenge a confidentiality designation by electing not to mount a challenge
8 promptly after the original designation is disclosed.

9 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
10 Party's confidentiality designation must do so in good faith and must begin the process by
11 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)
12 with counsel for the Designating Party. In conferring, the challenging Party must explain the
13 basis for its belief that the confidentiality designation was not proper and must give the
14 Designating Party an opportunity to review the designated material, to reconsider the
15 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
16 designation. A challenging Party may proceed to the next stage of the challenge process only if it
17 has engaged in this meet and confer process first.

18 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
19 designation after considering the justification offered by the Designating Party may file and
20 serve a motion that identifies the challenged material and sets forth in detail the basis for the
21 challenge. Each such motion must be accompanied by a competent declaration that affirms that
22 the moving party has complied with the meet and confer requirements imposed in the preceding
23 paragraph and that sets forth with specificity the justification for the confidentiality designation
24 that was given by the Designating Party in the meet and confer dialogue.

25 The burden of persuasion in any such challenge proceeding shall be on the Designating
26 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
27 question the level of protection to which it is entitled under the Producing Party's designation.
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1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
3 or produced by another Party or by a non-party in connection with this case only for prosecuting,
4 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only
5 to the categories of persons and under the conditions described in this Order. When the
6 litigation has been terminated, a Receiving Party must comply with the provisions of Section 11,
7 below.

8 Protected Material must be stored and maintained by a Receiving Party at a location and
9 in a secure manner that ensures that access is limited to the persons authorized under this Order.

10 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
11 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
12 disclose any information or item designated CONFIDENTIAL only to:

13 (a) the Receiving Party's Outside Counsel of record in this action, as well as
14 employees of said Counsel to whom it is reasonably necessary to disclose the information for
15 this litigation;

16 (b) the employees of the Receiving Party to whom disclosure is reasonably necessary
17 for this litigation;

18 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is
19 reasonably necessary for this litigation and who have signed the "Agreement to Be
20 Bound by Protective Order" (Exhibit A);

21 (d) the court and its personnel;

22 (e) court reporters, their staffs, and professional vendors to whom disclosure is
23 reasonably necessary for this litigation;

24 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
25 necessary. Pages of transcribed deposition testimony or exhibits to depositions that reveal
26 Protected Material must be separately bound by the court reporter and may not be disclosed to
27 anyone except as permitted under this Stipulated Protective Order. The party designating any
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1 material in the deposition "CONFIDENTIAL" shall bear any additional court reporter fees or
2 costs that are caused by the designation.

3 (g) the author of the document or the original source of the information.

4 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
5 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
6 Designating Party, a Receiving Party may disclose any information or item designated
7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

8 (a) the Receiving Party's Counsel of record in this action, as well as employees of
9 said Counsel to whom it is reasonably necessary to disclose the information for this litigation;

10 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary
11 for this litigation, (2) who have signed the "Agreement to Be Bound by Protective Order"
12 (Exhibit A),

13 (c) the court and its personnel;

14 (d) court reporters, their staffs, and professional vendors to whom disclosure is
15 reasonably necessary for this litigation; and

16 (e) the author of the document or the original source of the information.

17 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
18 necessary. Pages of transcribed deposition testimony or exhibits to depositions that reveal
19 Protected Material must be separately bound by the court reporter and may not be disclosed to
20 anyone except as permitted under this Stipulated Protective Order. The party designating any
21 material in the deposition "CONFIDENTIAL" shall bear any additional court reporter fees or
22 costs that are caused by the designation.

23 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
24 LITIGATION.

25 If a Receiving Party is served with a subpoena or an order issued in other litigation that
26 would compel disclosure of any information or items designated in this action as
27 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the
28 Receiving Party must so notify the Designating Party, in writing (by facsimile, if possible)

1 immediately and in no event more than three court days after receiving the subpoena or order.
 2 Such notification must include a copy of the subpoena or court order.

3 The Receiving Party also must immediately inform in writing the Party who caused the
 4 subpoena or order to issue in the other litigation that some or all the material covered by the
 5 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
 6 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
 7 caused the subpoena or order to issue.

8 The purpose of imposing these duties is to alert the interested parties to the existence of
 9 this Protective Order and to afford the Designating Party in this case an opportunity to try to
 10 protect its confidentiality interests in the appropriate court. The Designating Party shall bear the
 11 burdens and the expenses of seeking protection in that court of its confidential material – and
 12 nothing in these provisions should be construed as authorizing or encouraging a Receiving Party
 13 in this action to disobey a lawful directive from another court.

14 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 16 Material to any person or in any circumstance not authorized under this Stipulated Protective
 17 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
 18 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,
 19 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
 20 this Order, and (d) request such person or persons to execute the “Acknowledgment and
 21 Agreement to Be Bound” that is attached hereto as Exhibit A.

22 10. FILING PROTECTED MATERIAL.

23 Without written permission from the Designating Party, Protected Material shall be filed
 24 **in compliance with Civil Local Rule 79-5.**
~~pursuant to California Rules of Court Rules 2.550 and 2.551.~~

25 11. FINAL DISPOSITION.

26 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days
 27 after the final termination of this action, each Receiving Party must return all Protected Material
 28 to the Producing Party. As used in this subdivision, “all Protected Material” includes all copies,

1 abstracts, compilations, summaries or any other form of reproducing or capturing any of the
 2 Protected Material. With permission in writing from the Designating Party, the Receiving Party
 3 may destroy some or all of the Protected Material instead of returning it. Whether the Protected
 4 Material is returned or destroyed, the Receiving Party must submit a written certification to the
 5 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day
 6 deadline that identifies (by category, where appropriate) all the Protected Material that was
 7 returned or destroyed and that affirms that the Receiving Party has not retained any copies,
 8 abstracts, compilations, summaries or other forms of reproducing or capturing any of the
 9 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival
 10 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
 11 work product, even if such materials contain Protected Material. Any such archival copies that
 12 contain or constitute Protected Material remain subject to this Protective Order as set forth in
 13 Section 4, above.

14 12. MISCELLANEOUS

15 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
 16 seek its modification by the court in the future.

17 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
 18 Order no Party waives any right it otherwise would have to object to disclosing or producing any
 19 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
 20 no Party waives any right to object on any ground to use in evidence of any of the material
 21 covered by this Protective Order.

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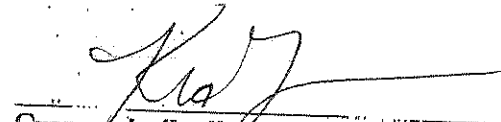
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1 IT IS SO STIPULATED BY AND BETWEEN THE PARTIES THROUGH THEIR COUNSEL
2 OF RECORD:

3
4 Dated: 4/26, 2010


Frank E. Mayo
Attorney for Plaintiff

7
8 Dated: 4/27, 2010


Gregory L. Spallas
Kia E. Myers
Attorneys for Defendants

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12 **PURSUANT TO STIPULATION, AS MODIFIED BY THE COURT,**
13 **IT IS SO ORDERED.**

14 Dated: May 6, 2010



Hon. Magistrate Judge
Howard R. Lloyd

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, of _____, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order agreed upon by the parties in the action styled *Carmen Leon v. Wal-Mart Stores Inc., et al*, Case No. C 09-05358 JF.

I agree to comply with and to be bound by all the terms of this Stipulated Protective Order unless and until modified by any court Order. I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the courts in and for the state of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed:

Print Name: _____

Signature: _____